

SERVICE DATE – MARCH 9, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34803

THE TOWN OF CORINTH, NY–ACQUISITION AND OPERATION EXEMPTION–  
CANADIAN PACIFIC RAILWAY

Decided: March 7, 2006

On December 15, 2005, the Town of Corinth, NY (Town), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Delaware and Hudson Railway Company, Inc., doing business as Canadian Pacific Railway (CPR), certain assets of a rail line extending from Adirondack Branch milepost 39.44 at or near Saratoga Springs, NY, to Adirondack Branch milepost 55.89 at or near Corinth, NY. Notice was served and published in the Federal Register on January 11, 2006 (71 FR 1785). Simultaneously with its notice, the Town filed a motion to dismiss the notice, asserting that the transaction is not subject to Board regulation because the Town will not become a common carrier as a result of the transaction. There is no opposition to the motion. The motion to dismiss will be granted.

BACKGROUND

Pursuant to the asset purchase agreement between the Town and CPR, the Town will acquire the right-of-way, track and other rail assets comprising the subject line.<sup>1</sup> However, under the agreement, CPR will retain a permanent and exclusive easement for freight railroad purposes over the line.<sup>2</sup> The Town asserts that, by virtue of the freight easement, CPR will retain all common carrier rights and obligations on the line.

The Town states that it is acquiring the line for the purpose of providing wholly intrastate scenic tour passenger operations and that it will have neither the right nor the obligation to conduct freight service on the line under the agreement. The Town further states that its exercise of ownership rights will not unreasonably interfere with CPR's provision of common carrier

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<sup>1</sup> In addition, the Town will acquire from CPR approximately 0.69 miles of incidental trackage rights, extending from milepost 37.10 to milepost 38.20 in Saratoga Springs, NY.

<sup>2</sup> The Town attached to its motion draft copies of the quitclaim deed, the asset purchase agreement and the operating agreement.

freight service,<sup>3</sup> and that although, under the operating agreement, the Town will eventually become responsible for maintaining the line, CPR will retain the right to perform additional maintenance itself if necessary. Therefore, according to the Town, CPR will retain the rights needed to fulfill its common carrier obligation.

The Town explains that its acquisition does not constitute an acquisition of a railroad line subject to the Board's jurisdiction. According to the Town, because it does not have the right to control freight rail service and will not hold itself out as willing or able to provide freight rail service on the line, its ownership of the line does not make it a rail carrier. The Town cites a number of cases in support of its position that this transaction is outside the Board's jurisdiction.<sup>4</sup>

### DISCUSSION AND CONCLUSIONS

The question here is whether the Board's regulatory approval is required for the Town to acquire the subject line. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily require Board approval under 49 U.S.C. 10901, even if the acquiring entity is a noncarrier. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Board authorization is not required, however, when the common carrier rights and obligations that attach to the line will not be transferred. See Maine, DOT-Acq. Exemption, ME. Central R. Co., 8 I.C.C.2d 835, 836-37 (1991).

The record shows that CPR is not transferring common carrier rights or obligations and that the Town will not hold itself out as a common carrier performing rail freight service. The agreement between CPR and the Town shows that the Town may provide wholly intrastate passenger, but not freight service, over the line; that CPR will retain all common carrier rights and obligations with respect to freight operations; and that the Town will not have sufficient rights to materially interfere with CPR's freight operations. Under these circumstances, we find that the Town will not become a rail carrier subject to the Board's jurisdiction as a result of this transaction. Therefore, this transaction does not require Board authorization, and the Town's notice of exemption will be dismissed and this proceeding will be discontinued.

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<sup>3</sup> The Town indicates that CPR has not performed any freight rail service over the line since November 2003. It points out, however, that if the need for freight service arises in the future, CPR will have the exclusive right and obligation to provide it.

<sup>4</sup> New Jersey Transit Corporation-Acquisition Exemption-Certain Assets of Consolidated Rail Corporation, STB Finance Docket No. 33786 (STB Served Feb. 15, 2000); State of Wisconsin Department of Transportation-Petition for Declaratory Order, STB Finance Docket No. 34181 (STB served Aug. 1, 2002); Georgia Department of Transportation-Petition for Declaratory Order, STB Finance Docket No. 34665 (STB served Apr. 14, 2005); Dallas Area Rapid Transit-Acquisition Exemption-Certain Assets of Regional Rail Right of Way Company, STB Finance Docket No. 34346 (STB served Nov. 12, 2003).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Town's motion to dismiss its notice of exemption is granted.
2. The proceeding is discontinued.
3. This decision is effective on its date of service.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams  
Secretary